

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1274 OF 2007

1. BEST Workers Union,)
42, Kennedy Bridge, Mumbai-400 007)
2. Prakash Walke, President,)
BEST Workers Union,)
42, Kennedy Bridge, Mumbai-400 007)..Petitioners

versus

1. The BEST Undertaking,)
BEST Bhavan, BEST Marg, Colaba,)
Mumbai-400 001)
2. The General Manager,)
The BEST Undertaking,)
BEST Bhavan, BEST Marg, Colaba,)
Mumbai-400 001)..Respondents

Mr. K.K. Singhvi, Senior Advocate, with Mr. M.D. Nagle for the petitioners.

Mr. S.K. Talsania, Senior Advocate, with Mr. J.S. Saluja, instructed by M/s. M.V. Kini & Company, for the respondents.

CORAM: SWATANTER KUMAR, C.J. &
SMT. RANJANA DESAI, J.

Judgment reserved on : July 10, 2007
Judgment delivered on: July 19, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):

Petitioner No.2 claims to be a member and office-bearer/representative of the Brihan Mumbai Electricity Supply and Transport Undertaking Workers' Union. He was elected as the President of the Union and was working as a Bus Controller. Petitioner No.2 has put in 34 years of service. There was a strike in BEST Undertaking for one and half days from the mid-night of 18th April, 2007, to the evening of 20th April, 2007. The strike was peaceful. The Chairman of the respondents had made an appeal to the workers to withdraw the strike as they were assured that their demands would be considered and no action would be taken against any of the workmen.

2. The matter in relation to the strike and furnishing of undertaking was also questioned before the 6th Labour Court, Mumbai, which vide its order dated 23rd April, 2007, disposed of the matter requiring not to take undertakings from the workmen. However, vide order dated 27th April, 2007, petitioner No.2 was placed under suspension and it was stated in the order of suspension that a departmental enquiry was contemplated against him for certain irresponsible allegations against the management. It was also informed in the said order that the petitioner would have to participate in the

departmental enquiry which was to commence on 4th May, 2007 at 10.00 a.m. The petitioner has questioned the correctness of the above order of suspension primarily on the ground that the order of suspension is arbitrary, punitive and is mala fide.

3. According to the respondents, the order of suspension is an order simpliciter on the ground that departmental enquiry is contemplated against the petitioner. The management has even completed its evidence before the enquiry officer and they are likely to conclude the departmental enquiry expeditiously and the present petition is an abuse of the process of law. It is stated in the order of suspension dated 27th April, 2007 that the petitioner, amongst making other irresponsible allegations and wild statements, had also stated that the officers of the Management had taken Rs. 3,000/- for giving employment to the persons in place of the employees who had participated in the strike. This allegation was viewed seriously by the management, which resulted in passing of the order of suspension and commencement of the departmental enquiry against the petitioner.

4. It is a settled principle of service jurisprudence that an order of suspension as commonly understood can neither be treated as

punitive nor an order requiring pre-determination of any issue. The order of suspension is passed by the Disciplinary Authority when a departmental enquiry is contemplated against an employee for his alleged misconduct. Suspension according to "Oxford Dictionary" means, the action of suspending or condition of being suspended; the action of debarring or state of being debarred, especially for a time from a function or a privilege; temporary deprivation of one's office or position. An employer thus can place an employee under suspension without really affecting or casting stigma on the working of an employee or his status. There can be no reason for the Court to restrict the scope and language of the expression used under different rules. Suspension, unlike a way of penalty, can be ordered by way of interim measure in a departmental enquiry or even where criminal proceedings are pending (See *Balvantrai Ratilal Patel vs. State of Maharashtra*, AIR 1968 SC 800). In the case of *Mahamad Chouso vs. State of A.P.*, 1957 SCR 414, the Constitution Bench of the Supreme Court unambiguously stated that an order of suspension passed against a Government servant pending disciplinary enquiry is neither one of dismissal nor of removal from service within the meaning of Article 311 of the Constitution of India. Wherever there are allegations of misconduct against an employee and if proved would demand imposition of

punishment in accordance with disciplinary rules. The order of suspension during completion of such enquiry can hardly be vitiated unless and until it was suffering from patent illegality in law or ex facie was so arbitrary that no person with common prudence could pass such an order. The Supreme Court in the case of *State of M.P. vs. L.P. Tiwari*, AIR 1994 SC 2175, has even enunciated the principle that wherever disciplinary proceedings are pending or contemplated and if charge-sheet could not be served for a considerable time, it would not have the effect of rendering the order of suspension void. The Court in the said case held as under:

“The order of suspension shall contain the reasons for making such order and where it proposes to hold an enquiry against him under Rule 14, a copy of articles of the charges, statement of imputation of misconduct or misbehaviour and a list of documents and witnesses by which charges are proposed to be sustained shall be issued or caused to be issued by the disciplinary authority to such Govt. servant within a period of 45 days from the date of order of suspension. By operation of the proviso to sub-rule (2-a) where the disciplinary authority is the State Govt., the copy of charges and other documents mentioned above shall be issued or caused to be issued to such Govt. servant within a period of 90 days from the date of order of suspension. The object appears to be that the competent authority having placed a delinquent officer under suspension, cannot sit over the case without prompt follow up action of conducting an inquiry into the alleged misconduct. The dereliction thereof entails the authority with denuding the power to continue the officer under suspension, though the power

of enquiry subsists, it would be clear from proviso to Rule 9 (2-b) which says that "the period of suspension shall in no case be continued beyond the period of 90 days from the date of the order of suspension". It would thus be clear that where disciplinary proceedings are pending or contemplated, it is open to the appointing authority, disciplinary authority or authorised officer to keep Govt. servant under suspension and have the articles of charges together with the particulars mentioned hereinbefore "shall be issued or caused to be issued" by the authority to such Govt. servant within the period mentioned hereinbefore. On its so issuing the order of suspension remains in force until revoked on reconsideration in terms of the rules based on facts scenario or proceedings terminated by an order on merits. It is thereby clear that service of the article of charge is not a condition precedent. Putting it in transmission within the period is sufficient compliance. No doubt every endeavour has to be made to have the charge-sheet served on the delinquent but the delinquent who evades receipt of it, cannot be allowed to take advantage of such evasion.

5. This Court in a recent judgment in *D.D.A. vs. H.C. Khurana* (1993) 3 SCC 196: (1993) AIR SCW 1417 considered the effect of a similar provision and held thus:

" The meaning of the word 'issued' has to be gathered from the context in which it is used. The decision to initiate disciplinary proceedings cannot be subsequent to the issuance of the charge-sheet, since issue of the charge-sheet is a consequent of the decision to initiate disciplinary proceedings. The service of the charge-sheet on the Government servant follows the decision to initiate disciplinary proceedings, and it does not precede or coincide with that decision. The delay, if any, in service of the charge-sheet to the Government servant, after it has been framed and despatched does not have the effect of delaying initiation of the disciplinary proceedings, inasmuch as information to the Government servant of the charges framed against him, by service of the charge-sheet, is not a part of the

decision making process of the authorities for initiating the disciplinary proceedings. The contrary view would defeat the object of enabling the Government servant, if so inclined, to evade service and thereby frustrate the decision and get promotion in spite of that decision.”

5. In the present case, the challenge to the order of suspension appears to be without any basis. Firstly, there are no specific allegations in the writ petition which can constitute mala fides in fact and law. Furthermore, nothing arbitrary is reflected in the averments made by the petitioners. For an action to be termed mala fide or arbitrary, the petitioners are expected to make specific averments in the writ petition and support them with documentary evidence as far as possible. Both these basic ingredients are lacking in the present case. Furthermore, whether such allegations were made by the petitioners against the management or not is a matter to be gone into during the course of enquiry. The power to suspend falls squarely in the domain of the disciplinary authority and unless and until the same was a patent abuse of power, the action of the authority can hardly be subjected to judicial review.

6. We are also unable to see any merit in the contention that the action is ill-founded. The content of the proposed enquiry had been

stated by the respondents in the order of suspension dated 27th April, 2007 itself and they had further indicated that the departmental enquiry was commenced on 4th May, 2007 whereafter the proceedings started in accordance with the Rules and, as we were informed during the course of hearing, the management has already concluded its evidence. The counsel appearing for the management further informed the Court that they would be able to conclude the departmental proceedings within one month provided the second petitioner fully cooperates in the departmental enquiry. In view of the clear stand taken by the management, we cannot accept the contention that the action of the respondents is mala fide or arbitrary. Even under the Service Rules/Standing Orders controlling the service of an employee, an order of suspension can be passed. The petition, in fact, is vague and is merely an attempt to delay the conclusion of the departmental enquiry.

7. For the reasons aforestated, we find no merit in this petition. The same is dismissed, while leaving the parties to bear their own costs.

CHIEF JUSTICE

SMT. RANJANA DESAI, J.